IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3421 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KIRTISINH CHHATRASINH CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3421 of 2004

MR D L Chaudhary for Mr RJ GOSWAMI for Petitioner No. 1

Ms Mita Panchal, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 16/04/2004

ORAL JUDGEMENT

The petitioner has filed this petition under

under Article 226 of the Constitution of India for appropriate writ, order or direction for quashing and setting aside an order dated 5.11.2003 passed by respondent No.2 under section 3(2) of the Gujarat Prevention of Anti-social Activities At, 1985 (for short, 'the PASA Act') directing detention of the present petitioner on the grounds stated in the detention order.

2. It was alleged against the petitioner that a case under sections 65, 66 and 81 of the Bombay Prohibition Act, 1949 was registered against the petitioner before Prohibition Police Station, Eastern Division C.R.No.1545/2003 on 2.11.2003 alleging that foreign liquor was found from his possession on 2.11.2003.

3. It was also alleged against the petitioner that two witnesses had given statements against the petitioner.

4. On the strength of the aforesaid registered offence and unregistered cases, the petitioner was found to be a bootlegger and with a view to prevent him from carrying on his bootlegging activities, he was ordered to be detained by the impugned order of detention.

5. Feeling aggrieved by the order of detention, the petitioner has preferred this petition before this court. It was contended that on mere registration of one offence against the petitioner, there would not be any justification in passing the order of detention. It has also been contended that the co-detenu and the co-accused has been released by this court by quashing and setting aside the detention order against the said detenu. That therefore,on the principles of parity, the present petition may be allowed and the petitioner may be released and the detention order may be quashed and set aside.

6. On receiving the petition, rule was issued and in response to the service of notice of rule, Ms. Mita Panchal, learned AGP appears on behalf of the respondents. I have heard the learned Advocates for the parties and have perused the papers.

7. The petitioner has been detained under section 3(2) of the said Act on the ground that one prohibition offence was registered against the petitioner. Now it can be gathered that on mere registration of solitary prohibition offence against the petitioner, it would not be legal or proper to detain the petitioner under section 3(2) of the Act. Therefore, the detention on the

strength of the said offence cannot be sustained in the eye of law. The reason is that on account of registration of solitary prohibition offence, it cannot be said that the said activity of the petitioner would lead to a threat to public order or public health.

8. The petitioner has also been detained on the ground that two witnesses have rendered statements against the petitioner but the names the said witnesses have not been disclosed to the petitioner. Learned AGP states that under section 9(2) of the Act, the detaining authority can withhold names of the witnesses from the notice and knowledge of the detenu. There is no difficulty in accepting the said argument. However, this court has decided in an order dated 19.4.2000 in Special Civil Application No.294/2000 (Coram: Hon'ble Mr Justice A L Dave) that while claiming privilege under section 9(2) of the Act, the detaining authority should objectively examine the genuineness and correctness of the statements made by the witnesses with respect to their fear or apprehension in their minds. In the present case, we find that the statements of the witnesses recorded by the police officers were verified by the detaining authority. However, it has not been found from the record that the detaining authority had verified the statements of the witnesses from the aforesaid angle. In other words, it does not appear on record that the genuineness and correctness of the reasonable fear or apprehension in the minds of the witnesses was actually examined by the detaining authority. It also does not appear on record that there was credible material before the detaining authority in order to record a finding that there was reasonable fear or apprehension in the minds of the witnesses and, therefore, their names were not required to be disclosed.

9. On the one hand, names of the said witnesses were not disclosed. Therefore, there was violation of principles of natural justice since the petitioner could not effectively submit his representation under Article 22(5) of the Constitution of India. The power of privilege under section 9(2) of the Act has not been properly exercised and therefore, non-disclosure of names of witnesses would defeat the object of the provisions made in Article 22 (5) of the Constitution of India. Consequently, when the petitioner was deprived of the said constitutional remedy, then in that case, further continuance of the detention of the petitioner cannot be sustained in the eye of law.

10. In abovesaid view of the matter, the order of

detention is not legal on the ground of registration of solitary offence which would not lead to a threat to public order or public health. With respect to the statements of unnamed witnesses also the order of detention cannot be sustained as the names of the witnesses have not been disclosed and power of privilege under Section 9(2) of the Act has not been properly exercised. Therefore, on both the grounds, the order of detention fails and, therefore, it is required to be quashed.

11. For the foregoing reasons, this petition is allowed. The impugned order dated 5.11.2003 passed by respondent No.2 is ordered to be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute to the aforesaid extent. No order as to costs. D.S. permitted.

[D P Buch, J.]

msp